

Prepared by and  
after recording,  
mail to:

John R. Zemenak  
Rathje & Woodward, LLC  
300 E. Roosevelt Road, #300  
Wheaton, IL 60187

FOR RECORDER'S USE

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**LICENSE AGREEMENT TO INSTALL STORMWATER AND DRAINAGE  
IMPROVEMENTS IN PUBLIC UTILITY AND DRAINAGE EASEMENTS**

THIS LICENSE AGREEMENT TO INSTALL STORMWATER AND DRAINAGE IMPROVEMENTS IN PUBLIC UTILITY AND DRAINAGE EASEMENTS ("Agreement") is entered into this 10<sup>th</sup> day of December, 2015, by and between the Village of Westmont, an Illinois municipal corporation ("Village") and \_\_\_\_\_, a \_\_\_\_\_ limited liability company ("Licensee").

WHEREAS, Licensee is the legal owner of certain real property located at 522 64<sup>th</sup> Street, Westmont, Illinois (collectively, the "Licensee Property"), which is legally described in **Exhibit "A"** attached hereto; and

WHEREAS, Licensee is proposing to subdivide the Licensee Property into two (2) residential lots, and in order to comply with the DuPage County Stormwater Ordinance and the ordinances of the Village of Westmont, it is necessary for Licensee to provide stormwater detention on Licensee's Property; and

WHEREAS, there is no economically feasible or convenient manner for Licensee to connect an outlet pipe from this stormwater detention basin on Licensee's Property to public stormwater facilities in a public right-of-way along 64<sup>th</sup> Street; and

WHEREAS, Licensee proposes to construct an outlet pipe from the aforesaid stormwater detention basin which will drain stormwater at a restricted rate across a public utility and drainage easement located on adjacent property known as the Charleston Place Townhomes, 1201-1223 Charleston Court, Westmont, Illinois ("Charleston Place Property"), which is legally described in **Exhibit "B"** attached hereto, and into an existing detention basin located on the Charleston Place Property; and

WHEREAS, the Charleston Place Property detention basin is contained within a public utility and drainage easement, has capacity to accommodate stormwater from the Licensee

Property, and drains into an existing public drainage ditch located on the south side of 63<sup>rd</sup> Street within the public right-of-way; and

WHEREAS, currently, stormwater from the Licensee Property flows overland unabated onto the Charleston Place Property and into the Charleston Place Property detention basin; and

WHEREAS, as a result of this proposed subdivision and stormwater improvements by Licensee, stormwater will be collected on Licensee's Property and released through a 1.25 inch diameter outlet pipe at the restricted rate of 0.105 cubic feet per second at peak flow into the Charleston Place Property detention basin, thus controlling and improving current stormwater flow on both of these properties; and

WHEREAS, the Village maintains public utility and storm water detention easements over a portion of the Charleston Place Property, as set forth in the plat of resubdivision for Charleston Court Townhomes Phase 1, being a resubdivision of Lot 1 in the plat of subdivision for Western Hills Development, and said easements provide for and allow facilities for stormwater management and drainage purposes; and

WHEREAS, the afore-described easements over the Charleston Place Property are referred to herein as the "Easements"; and

WHEREAS, Licensee seeks a license from the Village to install the above-described stormwater line ("Stormwater Line") within the Easements upon the Charleston Place Property which will direct stormwater from the Licensee Property through an underground pipe to the Charleston Place Property detention basin and ultimately into the public stormwater drainage ditch on 63<sup>rd</sup> Street, as set forth in the plans attached hereto as **Exhibit "C"**; and

WHEREAS, rather than have the Village construct this Stormwater Line at its expense within the Easements and then seek reimbursement from Licensee, the Village desires to grant a license to allow Licensee to construct this Stormwater Line at its expense within the Easements according to the terms and provisions of this Agreement; and

WHEREAS, the grant of license as set forth herein will require Licensee to construct, install, operate, maintain and replace (if needed) this Stormwater Line, to perform required landscape restoration after the installation of and any work upon the Stormwater Line, and will grant rights to the Village to repair or replace the Stormwater Line if Licensee fails to do so, and to charge Licensee for the costs of such repair or replacement work by the Village; and

WHEREAS, the Village has determined that this Agreement will serve the public interest by allowing for the efficient and improved conveyance of stormwater from the Licensee Property at no initial cost to the public, and will further serve the public interest by allowing for the proposed development of the Licensee Property in accordance with applicable stormwater ordinances.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and restrictions contained herein and other good and valuable consideration, the mutual sufficiency and receipt of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The Recitals stated above are restated and incorporated into this Section 1 as though fully set forth herein.

2. License.

A. The Village grants to Licensee a nonexclusive, perpetual license (the "License") allowing Licensee, and anyone working on behalf of Licensee, to enter upon the Easements located on the Charleston Place Property for the purpose of necessary and appropriate construction work to construct the Stormwater Line and to allow stormwater from Licensee's Property to flow within this Stormwater Line into the stormwater detention basin located with the Easements on the Charleston Place Property. This License shall be subject to all terms of this Agreement, and shall be subject to all existing utilities and drainage improvements located within the Easements, if any.

B. This grant of License also allows Licensee, and anyone working on behalf of Licensee, to enter upon the Easements for the purpose of necessary and appropriate maintenance of the Stormwater Line within the Easements and restoration of the Easements after such construction and/or maintenance.

C. All construction and maintenance work by Licensee, and anyone working on behalf of Licensee, pursuant to this License shall be performed in a good and workmanlike manner. Pathways shall restore the Easements to their original condition upon completion of all construction and maintenance work within the Easements.

D. This License is limited in scope to the uses and purposes set forth in this Section 2 and otherwise set forth in this Agreement. Licensee may not perform any other activities within the Easements, may not enter upon the Easements for any other purposes and activities except for those set forth in this Agreement, and may not expand the size or scope of the Easements.

E. Under no circumstances does this License permit or authorize Licensee, or anyone acting on behalf of Licensee, to enter upon any portion of the Charleston Place Property not contained within the Easements, except to the extent required to obtain access to the Easements. All construction and maintenance work by Licensee shall be performed solely within the Easements.

F. All construction, maintenance, restoration and repair of the Stormwater Line shall be performed by Licensee at its sole expense.

G. Licensee shall not remove or disconnect the Stormwater Line within the Easements without the written authorization of the Village or as otherwise provided in this Agreement.

3. Maintenance Obligation. Once constructed, and as a condition of this License, Licensee shall continually maintain the Stormwater Line within the Easements on the Charleston Place Property in good working order and for its intended purpose and in accordance with the permit and construction/maintenance standards set forth in Section 4 of this Agreement. Upon written notice to Licensee by the Village stating in general terms how and in what manner maintenance is required, Licensee shall be required to perform such maintenance in a timely manner. After performing any construction and/or maintenance work within the Easements related to the Stormwater Line, Licensee is required to restore the Easements to their condition prior to such construction and/or maintenance, with such restoration work to be performed according to the standards for maintenance set forth in this Agreement.

4. Permits and Construction/Maintenance Standards. Licensee shall obtain all necessary and required permits from the Village and any other governmental body or agency having jurisdiction over the work prior to performing any construction and maintenance work as permitted by this Agreement within the Easements. Additionally, all construction and maintenance work performed by Licensee shall be performed in accordance with all codes, ordinances, regulations and policies of the Village, including obtaining and keeping in effect, as necessary, all required licenses, bonds and permits. The Village shall have sole discretion, which shall be exercised in a reasonable and non-discriminatory manner, regarding the quality of the construction, maintenance and restoration by Licensee under this Agreement, including the appropriate size of and connections for the Stormwater Line.

5. [Left intentionally blank.]

6. Additional Consideration. In addition to the consideration otherwise set forth in this Agreement, Licensee agrees to pay the Village a one-time license fee of \$10.00, the receipt of which is hereby acknowledged by the Village.

7. Failure to Maintain. In addition to any other remedies set forth in this Agreement or otherwise available at law or equity, the Village retains the right to perform all necessary maintenance and restoration to the Stormwater Line located within the Easements upon the failure of Licensee to perform such maintenance and/or restoration after notice from the Village as set forth in this Agreement. In the event that the Village performs such maintenance and/or restoration, the entire cost of such maintenance and/or restoration shall be borne solely by Licensee. Licensee covenants and agrees to reimburse the Village for any such maintenance and/or restoration. In addition to all other remedies set forth in this Agreement and otherwise available to the Village at law or equity, the Village may place a lien on the Licensee Property for the costs of such maintenance and/or restoration work.

8. Termination. This Agreement may be terminated by the Village upon thirty (30) days written notice to Licensee due to a default of any term or condition of this Agreement,

unless said default is cured by Licensee within said thirty (30) day period (provided that in the event such default cannot be cured within a thirty (30) day period, Licensee shall have a reasonable period of time to cure such default), or unless immediate termination is required due to an immediate threat to the public health and safety. In the event of the termination of this Agreement, the Village shall record a notice of termination with the DuPage County Recorder, DuPage County, Illinois. In the event of termination of this Agreement for any reason, Licensee shall not be entitled to a refund of any portion of the consideration paid for this Agreement, nor shall Licensee be entitled to reimbursement for any costs or expenses incurred as a result of this Agreement, or compensation of any kind.

9. No Interest In Easements. Licensee understands, acknowledges and agrees that this Agreement does not create an interest or estate in Licensee's favor in the Easements or any public right-of-way or public utility. The Village retains all of its rights under the Easements, and this Agreement merely grants to Licensee the personal privilege to use the Easements throughout the term of this Agreement. This Agreement shall in no event be construed to create an assignment coupled with an interest in favor of Licensee, regardless of the expenditure of money, time and labor by Licensee on or within the Easements. Any expenditure of time, money or labor by Licensee on or in the Easements pursuant to this Agreement shall be at Licensee's own risk and peril.

10. Removal of Improvements. Any other provision in this Agreement to the contrary notwithstanding, in the event the Village determines that the installation, repair or replacement of utilities or public improvements in the Easements can only be accomplished by the temporary removal of the Stormwater Line, the Village will notify Licensee in writing and Licensee shall promptly remove on a temporary basis, at its own sole cost and expense, the Stormwater Line from the Easements. Provided, however, the Village agrees to use reasonable efforts to coordinate the removal of the Stormwater Line in a manner that will permit the continued use and occupancy of the Licensee Property. If Licensee fails to cause the removal, replacement and/or restoration as required by this section, the Village shall have the right to cause such removal, replacement and/or restoration at no cost or liability to the Village. Licensee covenants and agrees to reimburse the Village for such removal, replacement and/or restoration. In addition to all other remedies set forth in this Agreement and otherwise available to the Village at law or equity, the Village may place a lien on the Licensee Property for the costs of such removal, replacement and/or restoration work.

11. Indemnification. The Village shall in no way be liable for loss of or damage to the Licensee Property, the Easements, the Charleston Place Property or to any improvements or property located thereon, which may be damaged, destroyed or stolen in any way during the performance of the duties and obligations set forth in this Agreement by Licensee. Licensee hereby indemnifies and holds harmless the Village, its elected officials, officers, agents, servants and employees from and against any and all such claims, whether arising in tort, contract, or any other legal theory. Such indemnification shall include the Village's reasonable attorneys' fees incurred in connection with any such loss, claim or suit. The provisions of this section shall survive any termination and/or expiration of this Agreement.

12. Binding Effect. This Agreement and all of its obligations shall be deemed and taken to be covenants running with the land and shall be binding upon Licensee and its successors, heirs and assigns, and the Licensee Property. Upon transfer of the Licensee Property or any part thereof, the obligations of Licensee under this Agreement shall become the obligations of the transferee and any successor transferee.

13. Recording. This Agreement shall be recorded against the Licensee Property by the Village, at Licensee's expense, with the DuPage County Recorder of Deeds.

14. Litigation. Any legal action between the parties regarding this Agreement shall be filed in DuPage County, Illinois (either the DuPage County Circuit Court, Wheaton, Illinois or any permissible branch or field court) and shall be governed by Illinois law. If the Village substantially prevails in any legal action against Pathway to enforce the terms of this Agreement, the Village shall be entitled to recover its reasonable attorneys' fees and court costs, as well as any accrued interest at the prevailing statutory rate on any monies paid by the Village pursuant to this Agreement.

15. Severability. The terms of this Agreement shall be severable. In the event any of the terms or provisions or sections or subsections of this Agreement are deemed to be void or otherwise unenforceable for any reason, the remainder of this Agreement shall remain in full force and effect.

16. No Lease or Business Venture. This Agreement shall not be construed so as to create a lease, joint venture, partnership, employment or other agency relationship between the parties hereto.

17. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties and supersedes any prior agreement or understanding relating to the subject matter of this Agreement. This Agreement may be modified or amended only by a duly-authorized written instrument executed and duly approved by the parties hereto.

**[Signature Page to Follow]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first written above.

**VILLAGE OF WESTMONT**, an Illinois  
municipal corporation

By: \_\_\_\_\_  
Ronald J. Gunter, Mayor

ATTEST:

\_\_\_\_\_  
Virginia Szynski, Village Clerk

\_\_\_\_\_, a \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF LICENSEE PROPERTY**

LOT 13 OF RESUBDIVISION OF LOTS 1 TO 8 BOTH INCLUSIVE AND LOTS 36 TO 43 BOTH INCLUSIVE OF HIGHVIEW ESTATES, BEING A SUBDIVISION OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 23, 1941 AS DOCUMENT 423969, IN DUPAGE COUNTY, ILLINOIS.

PIN: 09-22-102-014

More Common Location: 522 64th Street, Willowbrook, Illinois 60527



**EXHIBIT "B"**

**LEGAL DESCRIPTION OF CHARLESTON PLACE PROPERTY**

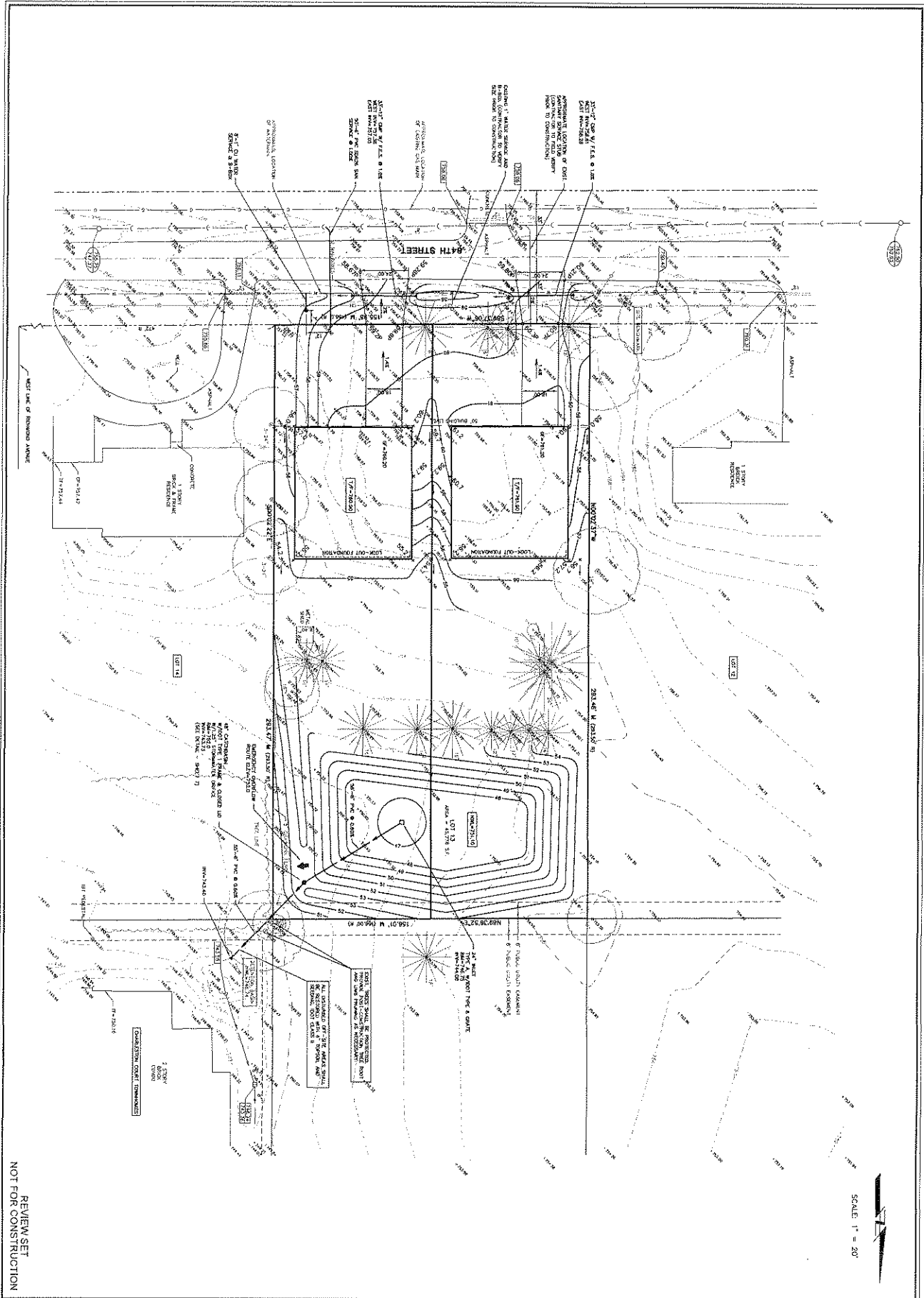
LOTS 1 THROUGH 7 AND COMMON AREA IN CHARLESTON COURT TOWNHOMES PHASE 1, BEING A RESUBDIVISION OF LOT 1 IN PLAT OF SUBDIVISION FOR WESTERN HILLS DEVELOPMENT, A RESUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF CHARLESTON COURT TOWNHOMES PHASE 1, RECORDED DECEMBER 20, 2007 AS DOCUMENT R2007-223131, IN DUPAGE COUNTY, ILLINOIS.

PINS: 09-22-102-038, 09-22-102-039, 09-22-102-040, 09-22-102-041, 09-22-102-042, 09-22-102-043, 09-22-102-044, 09-22-102-045,

More Common Locations:    1201 Charleston Court, Westmont, Illinois 60559  
                                     1205 Charleston Court, Westmont, Illinois 60559  
                                     1209 Charleston Court, Westmont, Illinois 60559  
                                     1211 Charleston Court, Westmont, Illinois 60559  
                                     1215 Charleston Court, Westmont, Illinois 60559  
                                     1219 Charleston Court, Westmont, Illinois 60559  
                                     1223 Charleston Court, Westmont, Illinois 60559

**EXHIBIT "C"**

**DEPICTION OF STORMWATER LINE WORK**



SCALE: 1" = 20'

REVIEW SET  
NOT FOR CONSTRUCTION

<p>DATE: 1-10-2015 DRAWN: S.A.P. CHECKED: C.P. PROJECT: 15-016 SHEET: 5 OF 7</p>	<p>SITE IMPROVEMENTS PLAN</p>	<p>64TH STREET WESTMONT RESUBDIVISION</p>	<p>SAMEER AFSAR 1734 WEST LEMOYNE-UNIT 1 CHICAGO, ILLINOIS 60622</p>	<p><b>INTECH CONSULTANTS, INC.</b> 1669 UNIVERSITY LANE, SUITE D LISLE, ILLINOIS 60532 PHONE: 630-964-8226 ENGINEERS - SURVEYORS ILLINOIS REGISTRATION NO. 164-001546</p>	<p>DATE: 1/10/2015 REVISION: 1</p>
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